

McMURRY OIL CO.

IBLA 91-318

Decided June 4, 1993

Appeal from a decision of the Associate Director, Minerals Management Service, denying an appeal from an order assessing charges for late reporting of production. MMS-90-0417-O&G.

Affirmed as modified.

1. Oil and Gas Leases: Civil Assessments and Penalties

Departmental regulation 30 CFR 216.408(a) calls for an assessment of an amount not to exceed \$10 per day for each report not received by MMS by the designated due date. Consistent with the longstanding practice of the Department in public land matters, the postmark date is not the date of receipt, and a document is deemed to have been filed when actually received.

2. Oil and Gas Leases: Civil Assessments and Penalties

For reporting under MMS' Production Accounting and Auditing System, a report is defined as each line of production information required on the applicable form.

APPEARANCES: John W. Martin, President, McMurry Oil Company, Casper, Wyoming; Howard W. Chalker, Esq., Peter J. Schaumberg, Esq., and Geoffrey Heath, Esq., for the Minerals Management Service.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

McMurry Oil Company (McMurry) has appealed from a March 18, 1991, decision of the Associate Director, Minerals Management Service (MMS), denying its appeal from an order assessing \$348 for late reporting of production. Under 30 CFR 216.50(b), the operator of an onshore Federal or Indian lease or agreement containing at least one well not permanently plugged and abandoned must file a monthly report of operations using Form MMS-3160. 1/ Lines are provided on Form MMS-3160 for reporting production from each well subject to an agreement or lease, with one well being reported on each

1/ An exception to this rule is allowed when an operator is authorized to report production data on Form MMS-4054.

line. The form also contains a section for describing the disposition of production.

The regulation at 30 CFR 216.50(b) also mandates filing a completed form on or before the 15th day of the second calendar month following the month being reported. Thus, McMurry was obligated to file a completed Form MMS-3160 for its April 1990 operations and production on or before June 15, 1990. Its report was filed on June 25.

McMurry states that the levy assessed by MMS for its late reporting is not "proper and fair," noting that "the whole process of fining for late reports had only just gone into effect." It contends that it is "ridiculous" to assess \$348 for an honest mistake which had been rapidly corrected by the company on its own initiative.

[1] McMurry contends that courts and other agencies accept a postmark as the date of filing. The applicable regulation, 30 CFR 216.40(a), calls for "[a]n assessment of an amount not to exceed \$10 per day * * * for each report not received by MMS by the designated due date." (Emphasis added.) 2/ McMurry contends that this requirement is "poorly thought out." However, it has been the longstanding practice of the Department in public land matters to consider a document to be filed when actually received. See, e.g., 43 CFR 1821.2-2(d), (f). The Board will affirm an assessment for the late filing of an MMS report if the assessment is consistent with the applicable regulations and has held that an appellant who has chosen the means of delivery of a document "must accept the responsibility for and bear the consequences of delay or nondelivery." Linmar Petroleum Co., 123 IBLA 45, 49 (1992); Conoco, Inc. (On Reconsideration), 113 IBLA 243, 249 (1990).

[2] For reporting under MMS' Production Accounting and Auditing System, "a report is defined as each line of production information required" (see 30 CFR 216.40(c)) and MMS considered the Form MMS-3160 filed by McMurry on June 25 as containing 116 reports. The applicable regulation provides for a \$10-per-day assessment for each report, and McMurry's reports were 10 days late. McMurry was therefore exposed to a maximum assessment of \$11,600. However, MMS based its \$348 assessment on a published policy to assess \$3 per month per report. 52 FR 27593 (July 22, 1987).

We are unable to determine how MMS arrived at 116 as being the number of delinquent reports. McMurry filed 14 separate forms, one for each lease or agreement. Each of its forms provided separate lines for reporting the production from each well, and each line constitutes a "report" under 30 CFR 216.40(c). An assessment sheet in the record tallies the line count for each form submitted by McMurry. A comparison of the count for

2/ McMurry stated that it had been afforded no proof that its reports were late. By order dated Aug. 15, 1991, McMurry was given copies of its reports, bearing a June 25, 1990, MMS datestamp.

each form with the number of wells reported on the form shows that two line items were added to each form for no apparent reason. We must conclude that MMS improperly assessed McMurry for two additional line items on each Form MMS-3160 it submitted. Accordingly, we modify MMS' decision by reducing the assessment to \$264, for 88 reports filed after the deadline for filing.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary to the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

R. W. Mullen
Administrative Judge

I concur:

James L. Burski
Administrative Judge